IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1082 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HIRABHAI JIVABHAI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR US BRAHMABHATT for Appellant(s) : 1,
MR KP RAWAL APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 18/01/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA)

1. The appellant has preferred this appeal

under Section 374 (2) of the Code of Criminal Procedure, 1973 and challenged the judgment and order 13-10-1998 rendered by the learned Addl. Sessions Judge, Junagadh in Sessions Case No. 135 of 1996, convicting the appellant for the offence punishable under Section 302 of the I.P. Code and sentencing him to undergo life imprisonment and to pay fine of of Rs.250/-, in default thereof, to undergo simple imprisonment of three months. The appellant has been acquitted of the offences punishable under Section 354 of the I.P. Code and under Section 135 of the Bombay Police Act.

2. In brief, the prosecution case is that deceased Shobhanaben was the wife of informant - Lakha Rana. Before about 1 ½ months of the incident, the appellant made illegal demands to deceased Shobhanaben and gave threats to kill her if she did not agree to the demands. Therefore, deceased Shobhanaben informed him about the same, hence he told Shobhana to file complaint before the police but the family members persuaded them not to file a complaint before the police. On 11-6-1996 at about 5-00 p.m. Shobhanaben went to dispose of rubbish, at that time, the appellant used criminal force with an intention to outrage modesty of Shobhanaben as she did not accede to the

demands of the appellant. The appellant assaulted Shobhanaben with knife and caused injuries. On account of the injuries Shobhanaben died on the spot.

3. On the basis of the First Information Report lodged by Lakhabhai Ranabhai Chauhan the husband of deceased Shobhanaben offence was registered as I – CR No. 79 of 1996 at Vanthali Police Station for the offence punishable u/s 302 of the I.P. Code and Section 135 of the Bombay Police Act and investigation was started. During the course of the investigation, statements of the witnesses were recorded. Panchnama of scene of offence, inquest panchanama and panchanama of recovery of muddamal knife were drawn. Dead body of Shobhanaben was sent for postmortem. The accused was arrested.

4. On completion of the investigation, charge sheet was laid before the the Court of the learned Judicial Magistrate, First Class, Vanthali, Dist. Junagadh for the offence punishable under Sections 302 and 354 of the I.P. Code and under Section 135 of the Bombay Police Act. As the offence was exclusively triable by the Court of Sessions, the case was committed to the Sessions Court, Junagadh and it was registered as Sessions Case No. 135 of 1996.

Charge Exh. 1 was framed against the accused for the offences punishable u/ss 302 and 354 of the I.P. Code and under Section 135 of the Bombay Police Act. The charge was read over and explained to the accused who pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution adduced evidence to prove the charge levelled against the accused. On completion of recording of evidence by prosecution the learned trial Judge explained to the accused the incriminating circumstances appearing against him in the evidence. The accused denied having committed the office in his further statement recorded u/s 313 of the Code of Criminal Procedure, 1973 and stated that he has been falsely implicated in the offence.

5. After hearing the learned A.P.P. for the State and the learned advocate for the accused, the learned trial Judge found the accused guilty for the offence punishable under Section 302 of the I.P. Code and convicted and sentenced him to undergo the sentence as mentioned hereinabove. Being aggrieved and dissatisfied by the said judgment and order, the the accused has preferred the present appeal.

6. We have heard the learned advocate Mr. U.S. Brahmabhatt for the appellant and the learned

A.P.P. Mr. K.P. Rawal for the respondent – State at length and in great detail. We have also perused the judgment of the trial court as well as the record and proceedings of the case.

7. Learned advocate Mr. U.S. Brahmabhatt for the appellant submitted that there is no direct evidence to connect the appellant with the offence and the oral evidence is of the interested witnesses. Therefore, the learned trial Judge committed error in recording the conviction against the appellant. He also submitted that alleged recovery of muddamal knife does not implicate the appellant and the blood group of the appellant as well as of the deceased were of the same group, and therefore, the learned trial Judge committed error in convicting the appellant on the basis of such evidence. Therefore, the appeal is required to be allowed and the appellant is required to be acquitted of the charge levelled against him.

8. While opposing the appeal, the learned A.P.P. Mr. Rawal submitted that the eye witness has given correct account of the incident. The evidence indicates that except P.W. 3 Karshanbhai none had witnessed the incident. Therefore, there was no other eye witness to the incident, and therefore, the learned trial Judge was justified

in relying upon his evidence. He also submitted that the appellant has not explained the injuries found on his person nor has he explained incriminating circumstances appearing against him in the evidence. Therefore, the learned trial Judge was justified in recording the conviction against the appellant and hence no interference is warranted in the impugned judgment and the appeal requires to be dismissed.

9. In order to prove the case, the prosecution examined P.W. 1 Dr. Jamnadas Chhaganbhai Ladani, who performed postmortem of the dead body of Shobhanaben, at Exh. 8. The witness deposed about the injuries found on the dead body. According to the witness, internal injury No.1 was corresponding to external injury No.1 recorded in Postmortem Report Exh.10 and the injuries were sufficient in the ordinary course of nature to cause death. The witness also deposed that the said injuries were possible by muddamal article knife. The defence has not been able to elicit anything in the cross-examination to indicate that death was not homicidal in nature.

10. The prosecution produced postmortem report at Exh.10. It indicates the external and external injuries found on the dead body. The cause of death was shock due to blood loss from the

injuries and the injuries to important organs of body, kidney and spleen. In view of the evidence of P.W. 1 Dr. Jamnadas Ladani Exh.8 and Postmortem Report Exh.10, the prosecution proved beyond reasonable doubt that the death of Shobhanaben was homicidal in nature.

11. The prosecution examined eye witness P.W. 3 Karshanbhai Ranabhai Chauhan at Exh. 12. It appears from the evidence of the witness that the incident occurred at 5-30 p.m. and the witness had seen the appellant inflicting knife blows to Shobhanaben. The evidence also indicates that the incident took place near water tank at Harijanvas in the village and he raised shouts as he saw the appellant assaulting Shobhanaben with knife, and therefore, Kamlaben the wife of his brother came there and the appellant ran away leaving his chappals at the place of the incident. The evidence also indicates that no one except Kamlaben reached at the place of the incident on hearing the shouts. It also appears from the evidence of this witness that he saw the incident from a culvert. He has denied that Lakhabhai's house is far away from culvert in Harijanvas and has also denied that shouts raised form the culvert would not be audible in the house of Lakhabhai. The evidence of this witness clearly indicates that the witness was present at

the time of the incident as he was going to purchase ration and when he reached near the culvert he saw the appellant assaulting the deceased with knife. This clearly indicates that the witness had seen the incident. The defence has not been able to elicit that the presence of the witness at the time of the incident was not probable or even doubtful.

12. The prosecution produced the map of the place of incident at Exh. 26. It does not indicate that the place of the incident was not visible from the culvert. Therefore, it cannot be said that th witness could not have seen the incident. The evidence also indicates that no one except P.W. 3 Karshanbhai was present at the time of the incident. Therefore, the submission that no other witness has been examined and the witness being the relative of the deceased, his evidence cannot be relied upon, cannot be accepted.

13. The prosecution examined P.W. 4 Kamlaben Kanabhai, who reached at the place of the incident on hearing shouts, at Exh. 13. The witness was the sister-in-law (Derani – wife of younger brother) of deceased Shobhanaben and on the day of the incident she was at her house and she went at the place of the incident on hearing

shouts of Karshanbhai. The evidence of this witness also indicates that the witness saw the appellant running away with knife in his hand and she was not the first person who reached at the place of the incident on hearing shouts of P.W. 3 Karshanbhai. The defence has not been able to demonstrate that the deposition of this witness is not reliable.

14. The prosecution examined P.W. 2 Lakhabhai Ranabhai Chauhan, the first informant and the husband of deceased Shobhanaben, at Exh. 11. It appears from the evidence of this witness that he reached at the place of the incident after the incident was over as he was called by one Bala Natha. The witness deposed that before about 1 ½ months of the incident, the appellant had tried to outrage modesty of his wife but no complaint was filed as the family members persuaded them not to lodge any complaint.

15. The F.I.R. Exh. 28 Indicates that the incident had occurred as deceased Shobhanaben refused to acceded to illegal demands made by the appellant before 1 ½ months of the incident.

16. The prosecution produced arrest panchanama at Exh. 17 and examined Panch P.W.6 Deva Naran Boriya at Exh. 18. The evidence of the panch

witness indicates that the appellant was found in side the well after the incident and was arrested by drawing panchanama Exh. 17. The panchanama was drawn between 22-00 and 23-00 hours on 11-6-1996. The appellant has not explained as to why he was in the well at this odd hours after the incident.

17. The prosecution produced panchanama of recovery of muddamal chappals and scene of offence at Exh.15 and examined panch witness Devayat Govind at Exh. 14. The witness supported the prosecution case. This evidence indicates that the appellant was involved in the offence and left the scene of offence leaving behind him his chappals. The appellant has not explained this incriminating evidence.

18. The prosecution examined the Investigating Officer P.W. 10 Madhukant Haribhai Vasani, at Exh.27. It appears from the evidence of this witness that on receiving the information with regard to the commission of the offence, he went at the place of the incident and carried out investigation. The evidence of this witness also indicates that the appellant was found inside the well and was arrested therefrom after drawing arrest panchanama between 22-00 hours and 23-00 hours on 11-6-1996. Therefore, it becomes

clear that the appellant was arrested within the hours of commission of the offence.

19. The prosecution produced station diary at Exh. 21. It indicates that the offence was registered at 20-00 hours on 11-6-1996.

20. The prosecution produced F.S.L. Report at Exh. 33. The muddamal articles, knife, clothes of the deceased and of the appellant, the chappals of the appellant and blood samples of the deceased and the appellant were sent to F.S.L. for examination. The report indicates that the samples of blood and the muddamal articles were having blood stained marks of 'B' blood group.

21. In view of the evidence of P.W. 3 Karshanbhai and P.W. 4 Kamlaben, it becomes clear that after commission of the offence, the appellant ran away from the place of incident leaving his chappals. The evidence clearly implicates the appellant in the offence. The appellant has not been able to explain as to how his chappals were found from the place of the incident. Therefore, in our view, the learned trial Judge was justified in convicting the appellant on the basis of the evidence led before him. Therefore, the appeal deserves to be dismissed and the impugned judgment and order of

the trial court is required to be confirmed.

22. For the reasons recorded in the judgment, the present appeal fails and is dismissed and the judgment and order of conviction and sentence dated 13-10-1998 passed by the learned Additional Sessions Judge, Junagadh in Sessions Case No.135 of 1996 is confirmed.

(A.L. Dave, J.)

(Bankim N. Mehta, J.)

/JVSatwara/